

Lake Erie Bill of Rights Charter Amendment
Department of Law

ORD. 497-18

Providing for the submission to the electors of the City of Toledo at a special election on February 26, 2019, an amendment to the Charter of the City of Toledo for the purpose of adding a new Section to the Charter entitled “Lake Erie Bill of Rights”; and declaring an emergency.

Be it ordained by the Council of the City of Toledo:

SECTION 1. Whereas, the Clerk of Council has received the adequate number of petition signatures as required by law for the following proposed Charter amendment to be submitted to the electors of the City of Toledo and pursuant to the Charter and the Constitution of the State of Ohio, the Toledo City Council hereby presents the proposed amendment for consideration and for certification to the Board of Elections of Lucas County, Ohio.

SECTION 2. That the amendment to the Charter of the City of Toledo, as hereinafter set forth, be submitted to the electors of said City at a special election to be held on February 26, 2019, pursuant to Ohio law and the Charter of the City of Toledo.

SECTION 3. That the amendment reads as follows:

“LAKE ERIE BILL OF RIGHTS

**ESTABLISHING A BILL OF RIGHTS FOR LAKE ERIE, WHICH PROHIBITS
ACTIVITIES AND
PROJECTS THAT WOULD VIOLATE THE BILL OF RIGHTS**

We the people of the City of Toledo declare that Lake Erie and the Lake Erie watershed comprise an ecosystem upon which millions of people and countless species depend for health, drinking water and survival. We further declare that this ecosystem, which has suffered for more than a century under continuous assault and ruin due to industrialization, is in imminent danger of irreversible devastation due to continued abuse by people and corporations enabled by reckless government policies, permitting and licensing of activities that unremittingly create cumulative harm, and lack of protective intervention. Continued abuse consisting of direct dumping of industrial wastes, runoff of noxious substances from large scale agricultural practices, including factory hog and chicken farms, combined with the effects of global climate change, constitute an immediate emergency.

We the people of the City of Toledo find that this emergency requires shifting public governance from policies that urge voluntary action, or that merely regulate the amount of harm allowed by law over a given period of time, to adopting laws which prohibit activities that violate fundamental rights which, to date, have gone unprotected by government and suffered the indifference of state-chartered for-profit corporations.

We the people of the City of Toledo find that laws ostensibly enacted to protect us, and to foster our health, prosperity, and fundamental rights do neither; and that the very air, land, and water – on which our lives and happiness depend – are threatened. Thus it has become necessary that we reclaim, reaffirm, and assert our inherent and inalienable rights, and to extend legal rights to our natural environment in order to ensure that the natural world, along with our values, our interests, and our rights, are no longer subordinated to the accumulation of surplus wealth and unaccountable political power.

We the people of the City of Toledo affirm Article 1, Section 1, of the Ohio State Constitution, which states: “All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.”

We the people of the City of Toledo affirm Article 1, Section 2, of the Ohio State Constitution, which states: “All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.”

And since all power of governance is inherent in the people, we, the people of the City of Toledo, declare and enact this Lake Erie Bill of Rights, which establishes irrevocable rights for the Lake Erie Ecosystem to exist, flourish and naturally evolve, a right to a healthy environment for the residents of Toledo, and which elevates the rights of the community and its natural environment over powers claimed by certain corporations.

Section 1 – Statements of Law – A Community Bill of Rights

(a) Rights of Lake Erie Ecosystem. Lake Erie, and the Lake Erie watershed, possess the right to exist, flourish, and naturally evolve. The Lake Erie Ecosystem shall include all natural water features, communities of organisms, soil as well as terrestrial and aquatic sub ecosystems that are part of Lake Erie and its watershed.

(b) Right to a Clean and Healthy Environment. The people of the City of Toledo possess the right to a clean and healthy environment, which shall include the right to a clean and healthy Lake Erie and Lake Erie ecosystem.

(c) Right of Local Community Self-Government. The people of the City of Toledo possess both a collective and individual right to self-government in their local community, a right to a system of government that embodies that right, and the right to a system of government that protects and secures their human, civil, and collective rights.

(d) Rights as Self-Executing. All rights secured by this law are inherent, fundamental, and unalienable, and shall be self-executing and enforceable against both private and

public actors. Further implementing legislation shall not be required for the City of Toledo, the residents of the City, or the ecosystems and natural communities protected by this law, to enforce all of the provisions of this law.

Section 2 – Statements of Law – Prohibitions Necessary to Secure the Bill of Rights

- (a) It shall be unlawful for any corporation or government to violate the rights recognized and secured by this law. “Corporation” shall include any business entity.
- (b) No permit, license, privilege, charter, or other authorization issued to a corporation, by any state or federal entity, that would violate the prohibitions of this law or any rights secured by this law, shall be deemed valid within the City of Toledo.

Section 3 – Enforcement

- (a) Any corporation or government that violates any provision of this law shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. Each day or portion thereof, and violation of each section of this law, shall count as a separate violation.
- (b) The City of Toledo, or any resident of the City, may enforce the rights and prohibitions of this law through an action brought in the Lucas County Court of Common Pleas, General Division. In such an action, the City of Toledo or the resident shall be entitled to recover all costs of litigation, including, without limitation, witness and attorney fees.
- (c) Governments and corporations engaged in activities that violate the rights of the Lake Erie Ecosystem, in or from any jurisdiction, shall be strictly liable for all harms and rights violations resulting from those activities.
- (d) The Lake Erie Ecosystem may enforce its rights, and this law’s prohibitions, through an action prosecuted either by the City of Toledo or a resident or residents of the City in the Lucas County Court of Common Pleas, General Division. Such court action shall be brought in the name of the Lake Erie Ecosystem as the real party in interest. Damages shall be measured by the cost of restoring the Lake Erie Ecosystem and its constituent parts at least to their status immediately before the commencement of the acts resulting in injury, and shall be paid to the City of Toledo to be used exclusively for the full and complete restoration of the Lake Erie Ecosystem and its constituent parts to that status.

Section 4 – Enforcement – Corporate Powers

(a) Corporations that violate this law, or that seek to violate this law, shall not be deemed to be “persons” to the extent that such treatment would interfere with the rights or prohibitions enumerated by this law, nor shall they possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights or prohibitions enumerated by this law, including the power to assert state or federal preemptive laws in an attempt to overturn this law, or the power to assert that the people of the City of Toledo lack the authority to adopt this law.

(b) All laws adopted by the legislature of the State of Ohio, and rules adopted by any State agency, shall be the law of the City of Toledo only to the extent that they do not violate the rights or prohibitions of this law.

Section 5 – Effective Date and Existing Permit Holders

This law shall be effective immediately on the date of its enactment, at which point the law shall apply to any and all actions that would violate this law regardless of the date of any applicable local, state, or federal permit.

Section 6 – Severability

The provisions of this law are severable. If any court decides that any section, clause, sentence, part, or provision of this law is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the law. This law would have been enacted without the invalid sections.

Section 7 – Repealer

All inconsistent provisions of prior laws adopted by the City of Toledo are hereby repealed, but only to the extent necessary to remedy the inconsistency.”

SECTION 4. That the foregoing amendment shall take effect immediately upon approval by the electors of the foregoing amendment and in accordance with provisions in the said amendment. The Clerk of Council is hereby ordered and directed to provide a copy hereof to the Ohio Secretary of State, within thirty (30) days after such vote of approval by the electors.

SECTION 5. The Clerk of Council is hereby ordered and directed to certify to the Board of Elections of Lucas County, Ohio, the enactment of this Ordinance for the submission of the aforesaid amendment at an election to be held at the time hereinabove mentioned, and the Clerk is directed to request the said Board of Elections to provide for the submission of the question of adopting the said amendment at the said election. The Clerk of Council is further ordered and directed to cause the publication of the full text of the proposed charter amendment once a week for not less than two (2) consecutive weeks in a newspaper published in the City of Toledo, with the first publication thereof being at least fifteen (15) days prior to the election at which the amendment is to be submitted to the

electors.

SECTION 6. It is hereby found and determined that all formal actions of this Council concerning and relating to the Adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the Public, in compliance with all legal requirements for open meetings, including section 121.22, Ohio Revised Code.

SECTION 7. That this Ordinance hereby is declared to be an emergency measure and shall be in force and effect from and after its adoption. The reason for the emergency lies in the fact that same is necessary for the immediate preservation of the public peace, health, safety and property, and for the further reason that the Ordinance must be immediately effective in order to permit the question of the aforesaid Charter amendment to be submitted at the next available election pursuant to Ohio law; wherefore this Ordinance shall be in force and effect immediately upon its adoption.

Vote on emergency clause: yeas 11, nays 0.

Passed: December 4, 2018, as an emergency measure: yeas 11, nays 0.

Attest:

Gerald E. Dendinger
Clerk of Council

Matt Cherry
President of Council

Approved:

December 7, 2018
Wade Kapszukiewicz
Mayor